



IN REPLY REFER TO:  
FWS-2019-00545

# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

1011 E Tudor Road MS: IRTM  
Anchorage, AK 99503



September 30, 2019

Mr. Brad Hennessy  
Western Values Project  
407C East 13<sup>th</sup> Street, Suite 568  
Whitefish, Montana 59937

Dear Mr. Hennessy:

This is a partial response to your Freedom of Information Act (FOIA) request concerning the Arctic National Wildlife Refuge, dated September 28, 2018, in which your associate Mr. Chris Saeger requested the following:

*All officials in the office of the Alaska Regional Director, including [RD] Greg Siekaniec  
Natural Resource Specialist Hollis Twitchell*

*Keywords: "Arctic National Wildlife Refuge", "ANWR". "Environmental Management  
and Planning Solutions", "EMPSi", "Area 1002", "Section 1002", "ANWR-1002",  
"AMWR 1002"*

### Response

In response to your request we are providing you with records processed in response to two FOIA requests we are currently processing for the Defenders of Wildlife (DOW) as part of ongoing FOIA litigation. We have enclosed one Adobe Acrobat Portable Document Format (PDF), totaling 543 pages. We have applied redactions to six pages and withheld eight pages in full pursuant Exemptions 5 and/or 6 as described below and noted within the PDF. The redacted and full release material is provided to you on the enclosed compact disc.

### Exemptions

**Exemption 5:** Exemption 5 allows an agency to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency." 5 U.S.C. § 552(b)(5). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges. In accordance with the privileges described below, we have redacted portions of five pages and withheld eight pages because they qualify to be withheld under one or more of the following privileges.

*Deliberative Process Privilege.* The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy

matters by ensuring agencies are not forced to operate in a fish bowl. A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) assure that subordinates will feel free to provide the decisionmaker with their uninhibited opinions and recommendations; (2) protect against premature disclosure of proposed policies; and (3) protect against confusing the issues and misleading the public. The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that reflect the “give-and-take of the consultative process” and may include “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.”

Two draft documents, consisting of eight pages total, have been withheld in full under the deliberative process privilege of Exemption 5 as both predecisional and deliberative. These documents do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would have a chilling effect on the agency’s deliberative processes; expose the agency’s decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions.” The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

*Government Commercial Information Privilege.* The information withheld under this privilege consists of active conference call telephone numbers and links to video conferences. This information could be used to conduct conference calls by parties outside the government or used to call in to monitor internal government conversations. We are withholding it because disclosure to the public would chill communications between federal employees and harm the government’s ability to exchange information. When the government enters the marketplace as an ordinary commercial buyer or seller, the government’s information is protected under the commercial information privilege if it is sensitive information not otherwise available, and disclosure would significantly harm the government’s monetary functions or commercial interests. The theory behind the privilege is that the government may be placed at a competitive disadvantage or the consummation of a contract may be endangered if confidential information generated by the government is disclosed.

**Exemption 6:** We have redacted a personal email addresses from one page pursuant to Exemption 6. Exemption 6 allows an agency to withhold “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). The phrase “similar files” covers any agency records containing information about a particular individual that can be identified as applying to that individual. To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the

privacy interest that would be affected by disclosure against any public interest in the information.

Under the FOIA, the only relevant public interest to consider under the exemption is the extent to which the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens know what their government is up to. The burden is on the requester to establish that disclosure would serve the public interest. When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public.

We have determined that the individual to whom this information pertains has a substantial privacy interest. Additionally, you have not provided information that explains a relevant public interest under the FOIA in the disclosure of this personal information and we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of these individuals and we are withholding it under Exemption 6.

We reasonably foresee that disclosure would harm an interest protected by one or more of the nine exemptions to the FOIA's general rule of disclosure. This response to your request was prepared in consultation Attorney-Advisor Larry Mellinger.

### **Conclusion**

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

We will continue to provide you with rolling responses as they are produced. If you have any questions please contact me at 575-425-0033 or via email at fw7\_foia@fws.gov

Sincerely,

Government Information Specialist (FOIA)  
U.S. Fish and Wildlife Service

Enclosure (DVD)

cc: L. Bernhardt Attorney-Advisor, Office of the Solicitor  
L. Mellinger, Attorney-Advisor, Office of the Solicitor  
FWS FOIA Coordinator, Region 7, Alaska